

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CARA L F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C23-5829 RSM

**ORDER REVERSING DENIAL OF  
BENEFITS AND REMANDING  
FOR FURTHER PROCEEDINGS**

Plaintiff seeks review of the denial of her application for Supplemental Security Income (SSI). Plaintiff contends the ALJ erred by rejecting her symptom testimony and Dr. Duthie's and Dr. Neims's medical opinions. Dkt. 10.<sup>1</sup> As discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

**BACKGROUND**

This is the second time Plaintiff seeks review of her SSI application. In a November 2020 decision, the ALJ found Plaintiff not disabled. AR 10–29. In February 2022, this Court

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<sup>1</sup> Plaintiff's Opening Brief does not entirely comply with the briefing requirements provided in the Court's Scheduling Order, as Plaintiff did not list the alleged errors on the first page of the brief. *See* Dkts. 7 at 2; 10 at 1. In the future, counsel shall take care to review and comply with the Court's briefing requirements.

1 reversed the ALJ’s decision and remanded for further proceedings. AR 624–33. In March 2023,  
 2 the ALJ conducted a new hearing on remand. AR 578–97. In May 2023, the ALJ issued a  
 3 decision again finding Plaintiff not disabled. AR 550–70. Plaintiff now seeks judicial review of  
 4 the ALJ’s 2023 decision.

## 5 DISCUSSION

### 6 1. Plaintiff’s Symptom Testimony

7 In the 2020 hearing, Plaintiff testified she is unable to work because of symptoms  
 8 stemming from a brain injury, including fatigue, migraines, memory loss, forgetfulness, poor  
 9 attention and concentration, insomnia, dizziness, irritability, emotional disturbances, depression,  
 10 and mood swings. AR 75. She explained it was hard for her to leave the house because of her  
 11 anxiety. AR 78. She testified she also has symptoms stemming from post-traumatic stress  
 12 disorder (PTSD), including insomnia, hypervigilance, exhaustion, and inability to regulate her  
 13 emotions. AR 76. During her more recent hearing, Plaintiff testified that since 2020, she has  
 14 had suicidal thoughts as well as continued difficulties with anxiety, agoraphobia, and insomnia.  
 15 AR 584, 586–88, 591. She explained that within a given month, she has difficulties getting out  
 16 of bed and “maintaining day to day life” 65 to 70 percent of the time due to her mental health  
 17 impairments.<sup>2</sup> AR 588.

18 Where, as here, an ALJ determines a claimant has presented objective medical evidence  
 19 establishing underlying impairments that could cause the symptoms alleged, and there is no  
 20 affirmative evidence of malingering, the ALJ can only discount the claimant’s testimony as to

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21 <sup>2</sup> Plaintiff also testified to other symptoms but challenges only the ALJ’s evaluation of her mental health symptoms.  
 22 Dkt. 10. The Court will not consider matters that are not “specifically and distinctly” argued in the plaintiff’s  
 23 opening brief. *Carmickle v. Commissioner, Social Sec. Admin.*, 533 F.3d 1155, 1161 n. 2 (9th Cir. 2008) (quoting  
*Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2003)). The Court will therefore only  
 consider the ALJ’s evaluation of this portion of Plaintiff’s testimony.

1 symptom severity by providing “specific, clear, and convincing” reasons supported by  
2 substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). “The standard  
3 isn’t whether our court is convinced, but instead whether the ALJ’s rationale is clear enough that  
4 it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

5 In this case, the ALJ determined Plaintiff’s “statements concerning the intensity,  
6 persistence and limiting effects” of her symptoms “are not entirely consistent with the medical  
7 evidence and other evidence in the record.” AR 558. The ALJ first noted Plaintiff’s “minimal  
8 engagement in treatment.” *Id.* An ALJ may discount the claimant’s testimony when the “level  
9 or frequency of treatment is inconsistent with the level of complaints.” *Molina*, 674 F.3d at 1113  
10 (quotation omitted). The ALJ’s assessment is not supported by substantial evidence. Addressing  
11 Plaintiff’s counseling, the ALJ pointed out there were “no noteworthy mental health treatment  
12 records throughout 2019,” and observed that instead of actual counseling notes from 2017  
13 through part of 2019, Plaintiff’s record contained only a letter from Plaintiff’s therapist. AR  
14 558–59. The ALJ’s focus on the lack of counseling notes is unavailing, considering the letter  
15 nonetheless confirms Plaintiff did engage in treatment. *See* AR 507. The letter also describes  
16 Plaintiff’s diagnoses and the symptoms her counseling sessions focused on, which reflect  
17 Plaintiff’s testimony. *Id.*

18 The ALJ also noted that Plaintiff denied medication. AR 559. “[A] claimant’s failure to  
19 assert a good reason for not seeking treatment, ‘or a finding by the ALJ that the proffered reason  
20 is not believable, can cast doubt on the sincerity of the claimant’s pain testimony.’” *Molina*, 674  
21 F.3d at 1113–14 (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). The record is not  
22 entirely clear about Plaintiff’s use of medication. Plaintiff testified her providers refused to  
23 prescribe her certain medication, yet treatment notes show it was Plaintiff herself who denied

1 their recommendation. *See* AR 592, 797–98, 801. Nonetheless, looking at the overall record,  
2 the ALJ’s finding is not wholly accurate because Plaintiff did not outright reject medication in  
3 general—only those recommended by per providers—because she agreed to start trial of  
4 hydroxyzine. *See* AR 801. Therefore, in rejecting Plaintiff’s testimony based on her declining  
5 medication, the ALJ erred.

6       Next, the ALJ rejected Plaintiff’s testimony based on her “unremarkable” mental status  
7 observations. AR 558. When objective medical evidence in the record is *inconsistent* with the  
8 claimant’s subjective testimony, the ALJ may indeed weigh it as undercutting such testimony.”  
9 *Smartt*, 53 F.4th at 498. Here, the ALJ pointed out that in a December 2018 evaluation, although  
10 Plaintiff endorsed PTSD, depression, anxiety, and panic, she was also found cooperative, alert,  
11 and oriented with moderately impaired memory, reasonably good insight and judgment, and  
12 normal intellectual functioning. *See* AR 558 (citing AR 534). The ALJ also pointed out that in a  
13 January 2019 evaluation, Plaintiff was found to have a dysphoric, very anxious, and fearful  
14 mood with moderate liability, yet she was also found as cooperative and well-groomed with  
15 intact thought process and content, orientation, perception, memory, fund of knowledge, abstract  
16 through and “fair to borderline” concentration, insight, and judgment. *See* AR 558 (citing AR  
17 481–82). The ALJ further pointed to other examinations, which show Plaintiff had normal  
18 affect, judgment, and mood, though she also had anxious or depressed mood. AR 772, 779, 791,  
19 797–98. The ALJ’s focus on the results of Plaintiff’s evaluations is only somewhat convincing.  
20 While the ALJ could reasonably reject Plaintiff’s statements regarding her suicidal thoughts,  
21 concentration, and memory based on her examinations, the results cited by the ALJ do not  
22 necessarily address her statements regarding her anxiety, agoraphobia, and insomnia. In fact,  
23 they appear to mirror Plaintiff’s testimony. In rejecting Plaintiff’s testimony based on objective

1 medical evidence, the ALJ erred.

2       The ALJ also seemed to reject Plaintiff's testimony by highlighting her statement that she  
3 worked in customer service until 2004 when she gave birth. AR 562 (citing AR 533). The ALJ  
4 may draw an adverse inference as to the credibility of a claimant's testimony when the record  
5 indicates the claimant stopped working for reasons other than his or her disability. *See Brutton v.*  
6 *Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). The cited evidence states Plaintiff did not return  
7 to work after giving birth because she was "in a car accident after that time." AR 533. Other  
8 records show the accident was in 2006. *See* AR 513, 738. The record as to whether Plaintiff  
9 stopped working for another reason is murky at best. As there is not enough information on this  
10 record, the Court finds this reason not supported by substantial evidence.

## 11       **2. Medical Opinion Evidence**

12       Under the applicable rules, the ALJ must "articulate how [he] considered the medical  
13 opinions" and "how persuasive [he] find[s] all of the medical opinions" by considering  
14 their supportability, consistency, relationship with the claimant, specialization, and other factors.  
15 20 C.F.R. § 416.920c(c). The ALJ is specifically required to consider the two most important  
16 factors, supportability and consistency. 20 C.F.R. § 416.920c(a). The supportability factor  
17 requires the ALJ to consider the relevance of the objective medical evidence and  
18 the supporting explanations presented by the medical source to justify their opinion. 20 C.F.R. §  
19 416.920c(c)(1). The consistency factor involves consideration of how consistent a medical  
20 opinion is with the other record evidence. 20 C.F.R. § 416.920c(c)(2). Further, under the new  
21 regulations, "an ALJ cannot reject an examining or treating doctor's opinion as unsupported or  
22 inconsistent without providing an explanation supported by substantial evidence." *Woods*, 32  
23 F.4th at 792.

1                   **a.       Dr. Duthie**

2           Dr. Duthie opined that due to Plaintiff’s “poor memory and concentration as well as  
3 multiple psychiatric symptoms, it is unlikely [Plaintiff] will be able to work on a full time basis  
4 over the next year.” AR 535. The ALJ first rejected Dr. Duthie’s opinion because it was not  
5 supported by his own evaluation. AR 561. How a medical source supports his or her medical  
6 opinion with relevant objective medical evidence and supporting explanations is a factor the ALJ  
7 must consider. 20 C.F.R. § 416.920c(c)(1). Here, the ALJ noted that although Plaintiff had  
8 moderately impaired memory and concentration, she also had intact fund of knowledge, an  
9 average intellectual functioning, and ability to follow the course of a conversation. AR 561. But  
10 Dr. Duthie also found Plaintiff had marked difficulty in carrying out simple and complex  
11 instructions, as well as moderate difficulties in interacting with others and responding to usual  
12 work situations and changes in a work routine—these align with Dr. Duthie’s opinion about  
13 Plaintiff’s psychiatric symptoms affecting Plaintiff’s work functionalities. *See* AR 535. In  
14 rejecting Dr. Duthie’s opinion for its lack of supportability, the ALJ erred.

15           The ALJ also rejected Dr. Duthie’s opinion because it was inconsistent with Plaintiff’s  
16 ability to care for young children and attend school, as well as the rest of Plaintiff’s record,  
17 which shows “improvement with medication and counseling.” AR 561. How consistent a  
18 medical opinion is with evidence from other medical sources and nonmedical sources is a factor  
19 the ALJ must also consider. 20 C.F.R. § 416.920c(c)(2). The ALJ’s assessment is  
20 unconvincing. Plaintiff testified it is a “daily challenge” to care for her children, that she does  
21 “just a little bit” every day, and she has increasingly needed help with caring for her children and  
22 household. AR 80–81, 587–88. Plaintiff also testified she withdrew from school due to her  
23 medical condition in January 2019, and the record indicates she had difficulties with schooling.

1 AR 590–91, 767–68. Further, reading the ALJ’s decision, there does not appear to be any  
2 citations documenting Plaintiff’s improvement from treatment, which the ALJ critiqued as  
3 lacking. *See* AR 558–60. Without more, the Court cannot say the ALJ reasonably rejected Dr.  
4 Duthie’s opinion based on its inconsistency. Because both of the ALJ’s supportability and  
5 inconsistency findings of Dr. Duthie’s opinion are not supported by substantial evidence, the  
6 ALJ erred in rejecting the physician’s opinion.

7 **b. Dr. Neims**

8 Dr. Neims opined that based on the combined impact of Plaintiff’s diagnosed mental  
9 impairments, Plaintiff would be overall marked in her ability to sustain a normal workday and  
10 workweek. *See* AR 480–81. The ALJ first rejected Dr. Neims’s opinion because it was not  
11 supported by his own evaluation. AR 561. How a medical source supports his or her medical  
12 opinion with relevant objective medical evidence and supporting explanations is a factor the ALJ  
13 must consider. 20 C.F.R. § 416.920c(c)(1). Here, the ALJ pointed to Plaintiff’s “logical  
14 thoughts and thought processes, thought content, orientation, perception, memory, fund of  
15 knowledge, and abstract thought within normal limits.” AR 562. Plaintiff argues the ALJ erred  
16 by considering only the Dr. Neims’s overall marked rating and ignoring the physician’s other  
17 marked proposed limitations and by selectively citing to Dr. Neims’s findings. Dkt. 10 at 12.  
18 The Court agrees. If Dr. Neims had only provided that Plaintiff was overall marked in her ability  
19 to work, then his normal findings would appear to undermine the physician’s opinion. But in  
20 addition to his overall rating, Dr. Neims also opined Plaintiff was marked in three specific work  
21 functionalities: communicating and performing effectively in a work setting; maintaining  
22 appropriate behavior in a work setting; and completing a normal work day and work week  
23 without interruptions from psychologically based symptoms. AR 481–82. These proposed

1 limitations appear to be substantiated by Dr. Neims’s finding regarding Plaintiff’s “dysphoric  
2 and very anxious and fearful mood,” “[m]oderate lability,” and “fair to borderline concentration,  
3 insight, and judgment. *See id.*

4 The ALJ also pointed to Dr. Neims’s indication that vocational training or services would  
5 “minimize or eliminate [barriers] to [Plaintiff’s] employment” and explained that this suggests  
6 the limitations Dr. Neims proposed were in part based on factors unrelated to Plaintiff’s  
7 impairments. AR 562 (citing AR 481). However, the ALJ did not explain how this inference  
8 was made. Further, even if Dr. Neims’s recommendation was based in part on other factors  
9 besides Plaintiff’s impairments, it would not necessarily be mutually exclusive with his medical  
10 opinion. It is entirely possible Dr. Neims could find training services useful for Plaintiff while at  
11 the same time finding Plaintiff’s work functionalities limited due to her impairments. Overall,  
12 the ALJ’s supportability finding fails to show that Dr. Neims’s opinion was not supported with  
13 relevant objective medical evidence and explanations, therefore the ALJ erred.

14 The ALJ also erred in rejecting Dr. Neims’s opinion for its inconsistency with other  
15 treatment notes showing Plaintiff’s fair performance on mental status evaluations and  
16 improvement in her symptoms with treatment. AR 562. As discussed in the previous section,  
17 Plaintiff’s treatment notes show Plaintiff either endorsed or was found to have PTSD,  
18 depression, and anxiety, mirroring Dr. Neims’s findings. AR 772, 779, 791, 797–98. As also  
19 discussed, the ALJ’s decision does not discuss records of improvement. Overall, the ALJ’s  
20 inconsistency finding is not supported by substantial evidence.

21 In sum, the ALJ failed to provide substantially supported reasons to reject the medical  
22 opinions of Dr. Duthie and Dr. Neims.

23 **3. Scope of Remedy**



1 Plaintiff contends that because the ALJ failed to properly evaluate Dr. Duthie's and Dr.  
2 Neims's opinions, the ALJ was required to include their proposed limitations in her RFC. Dkt.  
3 10 at 9–10, 14–15. Plaintiff also argues she would not be able to perform the occupations  
4 provided by the vocational expert ("VE") based on this erroneous RFC.

5 Certainly, "an RFC that fails an to take into account a claimant's limitations is defective."  
6 *See Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). However, it is  
7 within the ALJ's purview, not the Court's, to determine how the ALJ's improper rejection of  
8 Plaintiff's testimony and Dr. Duthie's and Dr. Neims's medical opinions affect the formulation  
9 of Plaintiff's RFC. *Dominguez v. Colvin*, 808 F.3d 403, 409 (9th Cir. 2015). Further, the  
10 occupations Plaintiff argues she is unable to perform are based on Plaintiff's *current* RFC, which  
11 could very well be different had the ALJ properly evaluated the medical evidence and Plaintiff's  
12 testimony.

13 In her Reply, Plaintiff contends the Court must remand for an immediate award of  
14 benefits because if Dr. Duthie's opinion or her testimony were credited as true, the ALJ would  
15 have to find her disabled on remand. Dkt. 16 at 8–9. Remand for an award of benefits "is a rare  
16 and prophylactic exception to the well-established ordinary remand rule." *Leon v. Berryhill*, 880  
17 F.3d 1041, 1044 (9th Cir. 2017). The Ninth Circuit has established a three-step framework for  
18 deciding whether a case may be remanded for an award of benefits. *Id.* at 1045. First, the Court  
19 must determine whether the ALJ has failed to provide legally sufficient reasons for rejecting  
20 evidence. *Id.* (citing *Garrison*, 759 F.3d at 1020). Second, the Court must determine "whether  
21 the record has been fully developed, whether there are outstanding issues that must be resolved  
22 before a determination of disability can be made, and whether further administrative proceedings  
23 would be useful." *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014)

(internal citations and quotation marks omitted). Only if the first two steps are satisfied can the Court determine whether, “if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. Further, “[e]ven if [the Court] reach[es] the third step and credits [the improperly rejected evidence] as true, it is within the court’s discretion either to make a direct award of benefits or to remand for further proceedings.” *Leon*, 880 F.3d at 1045 (citing *Treichler*, 773 F.3d at 1101).

The first step is met here, because the ALJ erred in rejecting Plaintiff’s testimony and the medical opinion evidence. However, before the Court can proceed to the third step, the Court must assess whether “the record has been developed thoroughly and is free of conflicts, ambiguities, or gaps” at step two. *Id.* at 1046. The Court finds there to be remaining factual gaps and conflicting information. For example, whether Plaintiff’s providers declined to prescribe her medication or whether she herself denied medication, and why Plaintiff stopped working after 2004 remain unclear. Additionally, the extent of how Plaintiff’s impairments affect her ability to work, as expressed in Dr. Duthie’s medical opinion and Plaintiff’s own testimony, are contradicted by other medical evidence. *See* AR 98, 116–17, 120–22, 772, 779, 791, 797–98. Plaintiff points out some of these medical opinions “date back to 2018,” but does not explain why that should lessen the contradictions in the record, especially since her alleged onset dates back to December 2004. *See Pacheco v. Berryhill*, 733 F. App’x 356, 360 (9th Cir. 2018) (“[E]vidence that predates the claimant’s application date but postdates the alleged onset date is pertinent to the alleged period of disability.”). Remanding for further administrative proceedings would be appropriate to address these issues. On remand, the ALJ must re-evaluate Plaintiff’s testimony and the medical opinion evidence, reassess all relevant steps of the disability evaluation process, and conduct any necessary proceedings to clarify the record and

reevaluate the disability determination in light of this order.

### CONCLUSION

For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

DATED this 27<sup>th</sup> day of March, 2024.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE